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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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ELI LILLY AND COMPANY,

*Plaintiff,*

v.

ACTAVIS ELIZABETH LLC,  
GLENMARK PHARMACEUTICALS  
INC., USA, SUN PHARMACEUTICAL  
INDUSTRIES LIMITED, SANDOZ INC.,  
MYLAN PHARMACEUTICALS INC.,  
APOTEX INC., AUROBINDO PHARMA  
LTD., TEVA PHARMACEUTICALS  
USA, INC., SYNTHON LABORATORIES,  
INC., ZYDUS PHARMACEUTICALS,  
USA, INC.,

*Defendants.*  
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Civil Action No. 07-3770 (DMC) (MF)

Dennis M. Cavanaugh, U.S.D.J.  
Mark Falk, U.S.M.J.

**ORDER GRANTING MOTION TO SEAL**

Upon the Application of Defendants Actavis Elizabeth LLC, Sandoz Inc., Mylan Pharmaceuticals Inc., Apotex Inc., Aurobindo Pharma Ltd., and Teva Pharmaceuticals USA, Inc. (collectively "Defendants"), for the entry of an Order, pursuant to Local Civil Rule 5.3(c), providing for the sealing of the Reply Memorandum in Support of Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590, Defendants' Response to Eli Lilly and Company's Counterstatement to Defendants' Statement of Material Facts Not in Dispute in Support of Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590, and Exhibits BBB, CCC and III that accompany the Second Certification of Brian J. Robinson in Support of Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590, all of which were filed on July 27, 2009, and the Court having considered the papers submitted in support of this Motion, *and there being no opposition*, the Court hereby finds:

1. Through discovery in this case, the parties have produced confidential information, the public disclosure of which could affect legitimate business interests. To protect the confidentiality of this information, the parties agreed to maintain the confidentiality of any produced materials pursuant to the Discovery Confidentiality Order entered in this case on August 1, 2008 (the "Confidentiality Order"), Document 206.

2. The Confidentiality Order allows the parties to designate information as "CONFIDENTIAL" (Confidentiality Order at ¶¶ 1, 2), and provides that a party wishing to use material designated "CONFIDENTIAL" in a submission filed with the Court must move under Local Rule 5.3 for leave to file the submission under seal (*id.* at ¶ 7).

3. Defendants have filed under seal, in accordance with the provisions of Local Civil Rule 5.3(c), its Reply Memorandum in Support of Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590 and Defendants' Response to Eli Lilly and Company's Counterstatement to Defendants' Statement of Material Facts Not in Dispute in Support of

Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590, along with Exhibits BBB, CCC and III that accompany the Second Certification of Brian J. Robinson in Support of Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590.

4. These materials contain information that has been designated "CONFIDENTIAL" by Eli Lilly and Company in accordance with the Confidentiality Order.

5. Defendants have complied with the terms of the Confidentiality Order by moving to seal these documents under Local Civil Rule 5.3(c).

6. The information contained in portions of the Reply Memorandum in Support of Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590 and Defendants' Response to Eli Lilly and Company's Counterstatement to Defendants' Statement of Material Facts Not in Dispute in Support of Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590, along with Exhibits BBB, CCC and III that accompany the Second Certification of Brian J. Robinson in Support of Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590 satisfies the standards set forth in Local Civil Rule 5.3. The public release of these materials, which include confidential and proprietary business information of Eli Lilly and Company, would greatly harm its competitive and business interests. There is no less restrictive alternative to the sealing of these materials.

**THEREFORE**, it is this 11<sup>th</sup> day of September 2009,

**ORDERED** that the Motion to Seal Pursuant to Local Rule 5.3 is hereby granted; and

**IT IS FURTHER ORDERED** that the Clerk is hereby directed to maintain the Reply Memorandum in Support of Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590, Defendants' Response to Eli Lilly and Company's Counterstatement to Defendants' Statement of Material Facts Not in Dispute in Support of Defendants' Motion for

Summary Judgment of Invalidity of U.S. Patent No. 5,658,590, and Exhibits BBB, CCC and III that accompany the Second Certification of Brian J. Robinson in Support of Defendants' Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,658,590, under seal.

  
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Honorable Mark L. L., U.S.M.J.